

ORDINANCE NO. 87-2007

A GENERAL ORDINANCE TO REPEAL CHAPTER 124 ENTITLED: ENVIRONMENTAL TOBACCO SMOKE IN PUBLIC ACCOMMODATIONS AND REENACT IT WITH THE TITLE: SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT

- WHEREAS, I.C. 36-8-2-4 authorizes municipalities to regulate conduct that may endanger the public health, safety, or welfare; and
- WHEREAS, numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke is a cause of disease in healthy nonsmokers, including heart disease, respiratory disease, and lung cancer; and
- WHEREAS, people at special risk are children, the elderly, individuals with cardiovascular disease or impaired respiratory function, including asthmatics, and those with obstructive airway disease; and
- WHEREAS, health hazards induced by breathing secondhand smoke include lung cancer, heart disease, respiratory infection, decreased respiratory function, and bronchospasm; and
- WHEREAS, there is a clear and present health and safety risk posed to all employees and patrons of facilities owned and operated in the City of Richmond by the smoking of cigarettes, cigars, pipes or any other tobacco product; and
- WHEREAS, it is determined that it is in the best interest of the public health, safety and welfare to regulate smoking activity in the City of Richmond, while balancing the needs and desires of businesses, employers, smokers and non-smokers; and
- WHEREAS, the City of Richmond Common Council finds and declares that the purposes of this chapter are: 1) to protect the public health and welfare by prohibiting smoking in public places, and places of employment; and 2) to promote the right of nonsmokers to breathe smoke-free air and to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke; and
- WHEREAS, The 2006 U.S. Surgeon General's Report, *The Health Consequences of Involuntary Exposure to Tobacco Smoke*, has concluded that (1) secondhand smoke exposure causes disease and premature death in children and adults who do not smoke; (2) children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory problems, ear infections, and asthma attacks, and that smoking by parents causes respiratory symptoms and slows lung growth in

their children; (3) exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer; (4) there is no risk-free level of exposure to secondhand smoke; (5) establishing smoke-free workplaces is the only effective way to ensure that secondhand smoke exposure does not occur in the workplace, because ventilation and other air cleaning technologies cannot completely control for exposure of nonsmokers to secondhand smoke; and (6) evidence from peer-reviewed studies shows that smoke-free policies and laws do not have an adverse economic impact on the hospitality industry. (U.S. Department of Health and Human Services. *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2006.); and

WHEREAS, the existing Richmond City Code chapter 124 should be repealed because new chapter will cover the signage prohibition language that is contained in the existing chapter; and

NOW, THEREFORE, be it ordained by the Common Council of the City of Richmond that:

Section 1: The existing chapter 124 of the Richmond City Code shall be repealed.

Section 2: A new chapter 124 of the Richmond City Code is enacted as follows:

SECTION

124.01	Definitions.
124.02	Application of Chapter to City-Owned Facilities.
124.03	Smoking Prohibited in Public Places.
124.04	Smoking Prohibited in Places of Employment.
124.05	Reasonable Distance.
124.06	Where Smoking is Not Regulated.
124.07	Posting of Signs; Removal of Smoking Paraphernalia.
124.08	Enforcement.
124.09	Penalties.
124.10	Non-retaliation.
124.11	Public Education.
124.12	Other Applicable Laws.
124.13	Severability.
124.14	Effective.

Sec. 124.01. Definitions

As used in this Chapter, the following have the following meanings unless otherwise designated:

- (a) “Bar” means any establishment used primarily for the sale of alcoholic beverages for consumption by guests on the premises and in which the sale of food is merely incidental to the sale of alcoholic beverages, including but not limited to taverns, nightclubs, and cocktail lounges.
- (b) “Business” means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.
- (c) “Employee” means any person who is employed by any employer for direct or indirect monetary wages or profit, including those employed full-time, part-time, on a temporary basis, or by contract through a third party.
- (d) “Employer” means any person, partnership, corporation, including a municipal corporation, or non-profit entity, which employs the services of one or more individual persons.
- (e) “Enclosed Area” or “Enclosed” means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of doors or passage ways), which extend from the floor to the ceiling, including all space screened by partitions which do not extend to the ceiling or are not solid, “office landscaping”, or similar structures.
- (f) “Health Care Facility” means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill.
- (g) “Person” means any individual, firm, partnership, association, corporation, company or organization of any kind.
- (h) “Place of Employment” means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including but not limited to, work areas, private offices, employee lounges and restrooms, conference and class rooms, employee cafeterias and hallways. A private residence is not a “place of employment” unless it is used as a licensed child care, adult day care or health care facility

(i) “Public place” means any enclosed area used by the general public, including, but not limited to, banks, beauty and barber shops, commercial establishments regardless of whether a fee is charged for admission to the place, educational facilities, health facilities, Laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, theaters and waiting rooms.

(j) “Restaurant” means any establishment used as or held out to the public as having food available for payment to be consumed on the premises, including coffee shops, cafeterias, cafes, private and public school cafeteria, and luncheonettes sandwich stands and soda fountains. The term “restaurant” shall include a bar area within the restaurant.

(k) “Retail Tobacco Store” means retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental. The term does not include retail stores where food or beverages are sold for consumption on the premises or where an area has been set-aside on the premises for customers to consume food or beverages.

(l) “Service Line” means an indoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.

(m) “Shopping Mall” means an enclosed public walkway or hall area that serves to connect retail or professional establishments.

(n) “Smoke” or “smoking” means the act of puffing, having in one’s possession, holding or carrying a lighted or smoldering cigar, cigarette, pipe, or smoking equipment of any kind, or lighting a cigar, cigarette, pipe or smoking equipment of any kind.

(o) “Sports Arena” means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

(p) “Theater” means any enclosed facility, open to the public, which is primarily used for or designed for the purpose of exhibiting any motion picture, stage drama, musical recital, dance, lecture or other similar performance.

Sec. 124.02 Application of Chapter to City-Owned Facilities

All enclosed facilities, including buildings and vehicles owned, leased, or operated by the City of Richmond, Indiana, shall be subject to the provisions of this Chapter.

Sec. 124.03 Smoking Prohibited in Public Places.

- (a) Smoking shall be prohibited in the following public places and other public places similarly situated, including, but not limited to, the following areas:
- (1) Aquariums, galleries, libraries, and museums.
 - (2) Areas available to and customarily used by the general public in businesses and nonprofit entities patronized by the public, including but not limited to, professional offices, banks, laundromats, hotels, and motels.
 - (3) Bingo facilities.
 - (4) Convention facilities.
 - (5) Elevators.
 - (6) Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance.
 - (7) Health care facilities.
 - (8) Licensed childcare and adult day care facilities.
 - (9) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
 - (10) Polling places.
 - (11) Public transportation facilities, including buses and taxicabs, under the authority of the City of Richmond and ticket, boarding, and waiting areas of public transit depots.
 - (12) Restaurants.
 - (13) Restrooms, lobbies, reception areas, hallways, and other common-use areas.
 - (14) Retail stores.
 - (15) Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the City of Richmond or a political subdivision of the State when a public meeting is in progress, to the extent the place is subject to the jurisdiction of the City of Richmond.
 - (16) Schools.
 - (17) Service lines.

- (18) Shopping malls.
- (19) Sports arenas, including enclosed places in outdoor arenas
- (b) Smoking shall be allowed outdoors, except where prohibited by other applicable laws.
- (c) Notwithstanding any other provisions of this section, any owner, operator, manager or other person who controls any establishment or facility may declare that entire establishment or facility as a nonsmoking establishment.

Sec. 124.04 Smoking Prohibited in Places of Employment.

- (a) It shall be the responsibility of employers to provide a smoke-free workplace for all employees.
- (b) The smoking policy shall be communicated to all employees. All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.
- (c) Each employer having an enclosed place of employment located within the City shall adopt, implement, make known and maintain a written smoking policy, which shall contain the following requirements:

Smoking shall be prohibited in all enclosed areas within places of employment. This includes, but is not limited to, common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.

Sec. 124.05 Reasonable Distance.

Smoking is prohibited within a reasonable distance of 25 feet from an enclosed area where smoking is prohibited by this Chapter, so as to insure tobacco smoke does not enter into establishments designated as smokefree under this Chapter through entrances, windows, ventilation intakes or other means.

Sec. 124.06 Where Smoking is Not Regulated.

- (a) Notwithstanding any other provision of this chapter, the following areas shall not be subject to the smoking prohibitions of this chapter:
 - (1) Private residences, except when used as a licensed childcare, adult day care, or health care facility.
 - (2) Bars

- (3) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided however, that not more than twenty percent (20%) of rooms rented to guests in a hotel or motel may be so designated. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.
 - (4) Retail tobacco stores; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Chapter.
 - (5) Private Club meeting halls, clubhouses, structural facilities and club property when these places are being used for private functions of the private club and its members; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Chapter.
 - (6) Outdoor areas of places of employment.
 - (7) Outdoors, except where prohibited by other applicable laws.
- (b) Notwithstanding any other provision of this Chapter, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section 124.07 is posted.

Sec. 124.07 Posting of Signs; Removal of Smoking Paraphernalia.

- (a) “No Smoking” signs or the international No Smoking symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly, sufficiently and conspicuously posted in every building or other area where smoking is prohibited by this chapter by the owner, operator, manager or other person having control of such building or other area.
- (b) Every public place where smoking is prohibited by this chapter shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.
- (c) All ashtrays and other smoking paraphernalia shall be removed from any area where smoking is prohibited by this chapter by the owner, operator, manager or other person having control of such area.
- (d) Any public place or place of employment exempted from this chapter shall clearly and conspicuously post the following sign at every entrance:
“Warning: Tobacco Smoke May Be Present.”

Sec. 124.08 Enforcement.

- (a) The City shall seek to gain voluntary compliance with this chapter by means of publicity and education programs, and the issuance of warnings, where appropriate.
- (b) Citations shall be issued by any sworn member of the Richmond Police Department, sworn members of the Richmond Fire Department as designated by the Richmond Fire Chief. In addition, in or on Richmond Community Schools property, by any special police officer appointed under I.C. 36-8-3-7 to serve the Richmond Community Schools, if such officer exist.
- (c) Any citizen who desires to register a complaint under this chapter may initiate enforcement with the Richmond Police Department.
- (d) Upon finding that any provision of this chapter has been violated, a violation citation will be issued to the person(s) responsible for the violation.

Sec. 124.09 Penalties.

- (a) A person who smokes in an area where smoking is prohibited by the provisions of this Chapter shall be guilty of an infraction, punishable by a fine not exceeding fifty dollars (\$50).
- (b) A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this Chapter shall be guilty of an infraction, punishable by:
 - (1) A fine of one hundred dollars (\$100) for a first violation.
 - (2) A fine of two hundred dollars (\$200) for a second violation within one (1) calendar year.
 - (3) A fine of five hundred dollars (\$500) for each additional violation within one (1) calendar year.
- (c) Each day on which a violation of this Chapter occurs shall be considered a separate and distinct violation.
- (d) All penalties shall be processed through the ordinance violations bureau by the City Clerks Office. If, after multiple violations by the same person or at the same business, the City legal and law enforcement departments have reason to believe that the fines will not be effective in enforcing this chapter, then the City legal department shall be empowered to seek any other remedies provided by law.

Sec. 124.10 Non-retaliation.

No person or employers shall discharge, refuse to hire or in any manner retaliate against any employee, applicant for employment, or customer because such employee, applicant, or customer exercises any right to a smoke-free environment afforded by this Ordinance.

Sec. 124.11 Public Education.

The City may engage in programs to explain and clarify the purposes and requirements of this chapter to citizens affected by it, and to guide owners, operators, and managers in their compliance with it. Such programs may include publication of a brochure for affected businesses and individuals explaining the provisions of this chapter.

Sec. 124.12 Other Applicable Laws.

This Chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

Sec. 124.13 Severability.

If any section or sentence or provision of this Ordinance, or the application thereof to any person or circumstances shall be declared unconstitutional or invalid, such invalidity shall not affect any of the other sections, sentences, provisions or application of this ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are declared to be severable.

Sec. 124.14 Effective Date

This Ordinance shall be in full force and effect thirty (30) days from and after its passage and adoption by the Common Council of the City of Richmond, Indiana.

Passed and adopted this ____ day of _____ 2007, by the Common Council of the City of Richmond, Indiana.

_____, President
(Diana Pappin)

ATTEST: _____, City Clerk
(Karen Chasteen)

PRESENTED to the Mayor of the City of Richmond, Indiana, this ____ day of _____, 2007, at 9:00 a.m.

_____, City Clerk
(Karen Chasteen)

APPROVED by me, Sarah L. Hutton, Mayor of the City of Richmond, Indiana, this
_____ day of _____, 2007, at 9:05 a.m.

_____, Mayor
(Sarah L. Hutton)

ATTEST: _____, City Clerk
(Karen Chasteen)